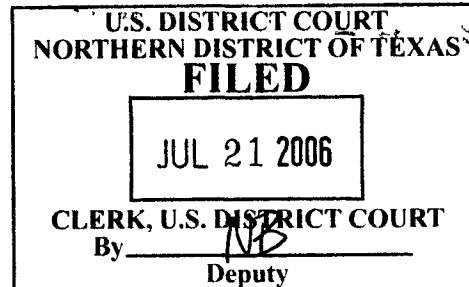


✓ P <sup>govt.</sup>  
ORIGINAL

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

**3 - 0.6 CV 1299 - P**

UNITED STATES OF AMERICA, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
PHILLIP M. BALLARD, individually )  
and d/b/a Asset & IRS Shield, Inc., )  
 )  
Defendant. )  
\_\_\_\_\_ )



**COMPLAINT FOR PERMANENT INJUNCTION AND OTHER RELIEF**

The United States, plaintiff, for its complaint states as follows.

**Nature of Action**

1. The United States is bringing this complaint, pursuant to 28 U.S.C. §§ 1340 and 1345, and Internal Revenue Code (26 U.S.C.; the "Code") §§ 7402, 7407 and 7408, to enjoin Phillip M. Ballard, and any entity through which he conducts business and all persons and entities in active concert or participation with him, from directly or indirectly:

- (a) Preparing or assisting in the preparation or filing of any federal income tax return for any other person or entity;
- (b) Engaging in conduct subject to penalty under Code § 6700, *i.e.*, by making or furnishing, in connection with the organization or sale of a plan or arrangement, including his "insurance" policy program described below, a statement the defendant knows or has reason to know to be false or fraudulent as to any material matter under the federal tax laws;
- (c) Engaging in conduct subject to penalty under Code § 6701, *i.e.*, preparing or assisting others in the preparation of any tax form or other document to be used in connection with a material matter arising under the internal revenue laws and which the defendant knows will (if so used) result in the understatement of tax liability;

- (d) Understating customers' tax liabilities based on unrealistic or frivolous positions as subject to penalty under Code § 6694;
- (e) Failing to sign tax returns prepared by him and failing to furnish his taxpayer identification number as subject to penalty under Code § 6695;
- (f) Representing persons before the Internal Revenue Service;
- (g) Engaging in any conduct that interferes with the administration and enforcement of the internal revenue laws; and
- (h) Engaging in any activity subject to any other penalty under the Internal Revenue Code.

2. An injunction is warranted based on the defendant's continuing conduct as a promoter of a tax-fraud plan. If not enjoined, the defendant's continuing actions will result in the Internal Revenue Service having to devote scarce resources to attempt to locate and investigate the defendant's customers, who by participation in the defendant's scheme have stopped filing accurate federal income tax returns and paying their federal income taxes. The defendant's actions will result in penalties and other civil and criminal sanctions being imposed on those customers.

#### **Jurisdiction and Venue**

3. Jurisdiction is conferred on this Court by 28 U.S.C. §§ 1340 and 1345, and Code §§ 7402(a), 7407 and 7408.

4. Venue is proper in this Court pursuant to 28 U.S.C. § 1391.

#### **Authorization**

5. This action has been requested by a delegate of the Secretary of the Treasury, and commenced at the direction of a delegate of the Attorney General of the United States, pursuant to the provisions of Code §§ 7402, 7407 and 7408.

**Defendant**

6. Phillip M. Ballard resides in Fort Worth, Texas, and conducts his business in the Northern District of Texas.

7. Ballard conducts business as Asset & IRS Shield, Inc., a sole proprietorship.

**Defendant's Activities**

8. Ballard is an income tax return preparer within the meaning of Code § 7701(a)(36). He prepares other people's tax returns for compensation.

9. Ballard prepares "zero returns" for his customers. That is, he prepares federal income tax returns for customers with taxable income that fraudulently show nothing but zeroes on most if not all lines.

10. Ballard attaches documents to the returns he prepares that purport to support his position that customers do not have taxable income or owe federal income taxes. These documents assert frivolous arguments—such as that "income" for tax-return purposes means only "corporate profit," and that a person who produces a profit cannot be taxed.

11. Ballard's "zero return" program is one of the types identified in the IRS's annual list of the "dirty dozen" tax scams. (*See* <http://www.irs.gov/newsroom/article/0,,id=154293,00.html>.) Federal courts have repeatedly held that "zero returns" are false or fraudulent.

12. Ballard fails to include his taxpayer identification number on returns he prepares.

13. On May 26, 2005, the IRS requested that Ballard provide a list of customers for whom he has prepared returns and copies of those customers' returns. Ballard failed to provide a list or copies of the returns.

14. The IRS has identified 23 returns Ballard prepared over the past three years that

assert false or fraudulent positions as described above.

15. In conjunction with his return preparation business, Ballard sells a phony “insurance policy” that he falsely promises will “reduce your taxes by at least 50%” and that he falsely promises will enable the purchaser to “never have to worry about the IRS again.”

16. Under the “policy’s” terms, Ballard will represent the customer with the IRS “and will pay any amount legally assessed by the IRS, including all penalties and interest thereon.” One catch is that Ballard does not consider any amounts assessed by the IRS to be “legally assessed,” and thus Ballard has no intention of paying taxes, penalties, or interest that the customers owe. Additionally, Ballard is not licensed to issue or sell insurance.

17. Also, the purported insurance policy dictates that Ballard shall be the customer’s income tax return preparer and sole point of contact with the IRS.

18. Ballard charges fees for the purported insurance policy from \$4,500 to \$8,000 annually. Ballard charges around \$1,250 for preparing a single tax return.

19. Ballard markets his programs primarily to persons who have had federal tax liens filed against them or persons whom the IRS has contacted about their federal tax liabilities.

20. While ostensibly representing his customers before the IRS, Ballard claims his customers are citizens of their home state and not United States citizens, and thus not subject to the federal income tax.

21. Ballard also falsely tells the IRS examining agents that Ballard is a full-time employee of the customer who is under audit, and thus able to represent the customer in all tax matters and thereby circumvent the rules regarding who is authorized to practice before the IRS.

22. When the IRS agent rejects or disagrees with Ballard’s positions, Ballard then often prepares and files a “zero return” for the customer.

23. In addition, when representing customers, Ballard makes frivolous arguments to IRS examiners, such as that the IRS does not have the authority to audit or determine the customer's tax liability. Ballard's conduct obstructs and interferes with IRS examinations of his customers' returns.

24. In connection with marketing his programs, Ballard makes numerous false statements to his customers in connection with advising them that he can help them secure tax benefits, including the following:

- The IRS is a collection agency working for foreign banks and operating out of Puerto Rico under color of the Federal Alcohol Administration.
- When all the evidence is examined objectively, the IRS appears to be a money laundering extortion racket, which conspires to engage in a pattern of racketeering.
- The IRS has no lawful jurisdiction to operate within any of the 50 states.
- The 14<sup>th</sup> and 16<sup>th</sup> Amendments have never been properly ratified.
- Only federal employees are subject to tax withholding laws.

25. When soliciting business or dealing with his customers, Ballard falsely holds himself out as an attorney.

26. Ballard tells his customers that he is knowledgeable about the tax laws and that he "has fought the IRS to a stand still on his own personal income tax filings since 1981." Ballard does not mention that he has been assessed hundreds of thousands of dollars by the IRS for taxes, interest and penalties, with respect to his personal liabilities.

27. The IRS has notified Ballard that it is investigating him for penalties and injunctive relief because of the conduct described herein. Ballard has not cooperated in the investigation, and has continued the above-described activities

28. Ballard falsely advertises his products and services on his website, [www.noirs.us](http://www.noirs.us).

29. Ballard's conduct and the frivolous positions he asserts in representing customers before the IRS and on returns he prepares for customers cause substantial harm to the United States.

**COUNT I – Injunction under Code § 7407**

30. The United States incorporates the allegations of paragraphs 1 through 29.

31. Code § 7407 authorizes a court to enjoin an income tax return preparer if, *inter alia*, the court finds that the return preparer has engaged in conduct subject to penalty under Code §§ 6694 or 6695, or misrepresents his experience or education as a preparer, and that injunctive relief is appropriate to prevent the recurrence of the conduct.

32. Code § 6694 imposes penalties on income tax return preparers who willfully attempt to understate the tax liability of another person.

33. Code § 6695 imposes a penalty on a return preparer who fails to include his identifying number on a prepared return or fails to turn over a customer list or copies of customers' returns to the IRS on request.

34. Ballard has engaged in conduct subject to penalty under Code § 6694 by preparing returns containing complete fabrications with respect to the amount of income earned or taxes owed by his customers. Ballard willfully understates his customers' tax liabilities by entering zeroes throughout the returns he prepares for them.

35. Ballard has engaged in conduct subject to penalty under Code § 6695 by failing to include his taxpayer identification number on the returns he has prepared and by failing to provide the IRS with either a customer list or copies of returns he has prepared.

36. Ballard has misrepresented his experience and education as a return preparer by

falsely representing himself as an attorney.

37. Injunctive relief is appropriate to prevent this misconduct because, absent an injunction, Ballard is likely to continue to prepare false federal income tax returns and engage in other misconduct of the type described in this complaint.

38. Ballard should be permanently enjoined under Code § 7407 from acting as an income tax return preparer because a more limited injunction would be insufficient to stop his interference with the proper administration of the tax laws.

### **COUNT II – Injunction under Code § 7408**

39. The United States incorporates the allegations of paragraphs 1 through 38.

40. Code § 7408 authorizes courts to issue injunctions against conduct that is subject to penalty under Code §§ 6700 or 6701 or that is subject to any other penalty under the Internal Revenue Code.

41. Code § 6700 imposes a penalty on any person who organizes or sells a plan or arrangement and in connection therewith makes a statement with respect to the allowability of any deduction or credit, the excludability of any income, or the securing of any tax benefit by participating in the plan or arrangement that the person knows or has reason to know is false or fraudulent as to any material matter.

42. Code § 6701 imposes a penalty on any person who aids in or advises with respect to the preparation of any portion of a tax return or other document that the person knows or has reason to believe will be used in connection with a material matter under the internal revenue laws, and that the person knows would, if used, result in understatement of another person's tax liability.

43. In connection with selling his insurance-policy-program Ballard makes statements

regarding the tax benefits associated with participation in the program that he knows or has reason to know are false or fraudulent as to material matters within the meaning of Code § 6700. Ballard has thus engaged in conduct subject to penalty under Code § 6700.

44. Ballard has prepared and filed federal tax returns and other documents for others knowing that the returns or documents would, if used, result in the understatement of another person's federal tax liability. He has engaged in conduct that is subject to penalty under Code § 6701, and an injunction under Code § 7408 is appropriate.

45. Ballard knows the statements he makes and positions he espouses in connection with his programs are false or fraudulent. He knows that courts have rejected his arguments and that the IRS has assessed liabilities against him for relying on his arguments.

46. Unless enjoined by the Court, Ballard is likely to continue to market his program and prepare tax returns or other documents that he knows will result in the understatement of tax liability.

47. Accordingly, Ballard should be enjoined under Code § 7408 from engaging in conduct subject to penalty under Code §§ 6700 or 6701 or from engaging in conduct subject to penalty under any other section of the Code.

### **COUNT III – Injunction under Code § 7402**

48. The United States incorporates the allegations of paragraphs 1 through 47.

49. Code § 7402(a) authorizes courts to issue injunctions “as may be necessary or appropriate for the enforcement of the internal revenue laws.” The remedies available to the United States under this statute “are in addition to and not exclusive of any and all other remedies.” Code § 7402(a) .

50. The defendant, through the actions described above, has engaged in conduct that

substantially interferes with the administration and enforcement of the internal revenue laws, and is likely to continue to engage in such conduct unless enjoined by the Court. Ballard's conduct is causing irreparable injury to the United States and an injunction under Code § 7402(a) is necessary and appropriate.

51. Unless Ballard is enjoined, the IRS will have to devote substantial time and resources to identify and locate his customers, and then construct and examine their tax returns and liabilities. The burden of pursuing all individual customers may be an insurmountable obstacle, given the IRS's limited resources.

52. The Court should order injunctive relief under Code § 7402(a).

WHEREFORE, the United States of America requests the following relief:

A. That this Court find that the defendant has continually and repeatedly engaged in conduct subject to penalty under Code §§ 6694, 6695, 6700 and 6701, and that injunctive relief limited to prohibiting such conduct would not be sufficient to prevent the defendant's interference with the proper administration of the Internal Revenue Code;

B. That this Court, pursuant to Code § 7407, enter a permanent injunction prohibiting the defendant from preparing or assisting in the preparation or filing of federal income tax returns or other related documents and forms for others;

C. That this Court, pursuant to Code § 7408, enter a permanent injunction prohibiting the defendant from organizing, marketing or selling any plan or arrangement, including his "insurance" policy program, that makes statements regarding the securing of any tax benefit that the defendant knows are false or fraudulent;

D. That this Court, pursuant to Code § 7402, enter an injunction requiring the defendant to produce to the United States his customer list, including the names, addresses, e-mail

addresses, telephone numbers, and social security or tax identification numbers, identifying the persons for whom he prepared or assisted in preparing federal income tax returns since January 1, 2001, and who have purchased his plans, arrangements or programs, including his “insurance” policy, and to file with the Court, within 20 days of the date the permanent injunction is entered, a certification signed under penalty of perjury stating that he has done so;

E. That this Court, pursuant to Code § 7402, enter an injunction prohibiting the defendant from representing, or appearing with or on behalf of his customers or any other persons in any matter before the Internal Revenue Service;

F. That this Court, pursuant to Code § 7402, enter an injunction requiring the defendant to contact by mail (and by e-mail, if an address is unknown) all persons for whom he prepared or assisted in preparing a federal income tax return after January 1, 2001, and those individuals and entities that have purchased his plans, arrangements or programs, including his “insurance” policy, and inform them of the Court’s findings concerning the falsity of the defendant’s representations and attach a copy of the permanent injunction, and to file with the Court, within 20 days of the date the permanent injunction is entered, a certification under penalty of perjury that he has done so;

G. That this Court, pursuant to Code § 7402, enter an injunction requiring the defendant to either shut down his website, [www.noirs.us](http://www.noirs.us), or to remove from that website, and any other website he controls, all tax scheme promotional materials, false commercial speech, and materials designed to aid or assist others in violating the law (including the tax laws), and to display prominently at the top of the first page of those websites a complete copy of the Court’s permanent injunction, and to maintain the websites for one year with a complete copy of the Court’s permanent injunction so displayed throughout that time, and to file with the Court,

within 20 days of the date the permanent injunction is entered, a certification that he has done so;

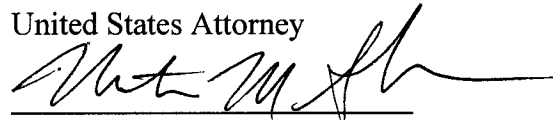
H. That this Court order that the United States is permitted to engage in post-judgment discovery to ensure compliance with the permanent injunction;

I. That this Court retain jurisdiction over this action for purposes of implementing and enforcing the final judgment; and

J. For such other and further relief as this Court may deem proper and just.

Dated: July 20, 2006

RICHARD B. ROPER  
United States Attorney



MARTIN M. SHOEMAKER  
Ga. Bar # 001340  
Trial Attorney, Tax Division  
U.S. Department of Justice  
P.O. Box 7238  
Washington, D.C. 20044  
Phone: (202) 514-6491  
Fax: (202) 514-6770  
Email: [martin.m.shoemaker@usdoj.gov](mailto:martin.m.shoemaker@usdoj.gov)  
Attorney for Plaintiff